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IN THE

Supreme Court of the United States

October Term, 1976.

No. 76-841.

STATE OF ILLINOIS, et al.,

Petitioners,

v.

CONSOLIDATED RAIL CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the Special Court Regional Rail Reorganization Act of 1973.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Respondents, Consolidated Rail Corporation ("Conrail"), United States Railway Association ("USRA"), and the Louisville & Nashville Railroad Company ("L&N"), join in this brief in opposition to the petition for a writ of certiorari to the Special Court, Regional Rail Reorganization Act of 1973, filed by the State of Illinois and various local governmental units of the State ("Petitioners"). Conrail was the original plaintiff in the action below, but USRA and the L&N were permitted, without objection, to intervene as plaintiffs. As intervenors, USRA and the L&N are properly deemed respondents in this Court.

JURISDICTION.

Petitioners state that the jurisdiction of this Court to review the order entered below is conferred by Section 209(e)(3) of the Regional Rail Reorganization Act of 1973, as amended, 45 U.S.C. § 719(e)(3) ("Rail Act"). The relevant portion of that Section permits review (by petition for a writ of certiorari) of a "final order or judgment of the special court." Respondents call attention to the fact that the order entered below is interlocutory in nature, and that interlocutory orders may not (though we take no position on the issue) have been comprehended within the language cited in Section 209(e)(3). In the same Section, when referring to review of "any order or judgment enjoining the enforcement, or declaring or determining the unconstitutionality or invalidity, of this chapter, in whole or in part . . . ," Congress referred to review by direct appeal "in the same manner that an injunctive order may be appealed under section 1253 of Title 28 [United States Code]." 28 U.S.C. § 1253, by providing for appeals from "an interlocutory or permanent injunction," recognizes the distinction between final orders and those which are interlocutory in character. The same distinction emerges from a comparison of 28 U.S.C. § 1291 ("final decisions") with 28 U.S.C. § 1292(a)(1) (interlocutory orders). Congress thus may have intended the words "final order or judgment" in the forepart of Section 209(e)(3) of the Rail Act to have a restrictive meaning. The three cases cited in the Petition in the jurisdictional statement (pages 2-3) do not address the question noted here, and we know of no legislative history which would be clearly helpful in further defining Congressional intent.

QUESTIONS PRESENTED.

None of the questions presented are worthy of review by this Court, but the third question should be restated to read:

3. Did the Special Court, on the record before it, abuse its discretion in issuing a preliminary injunction, especially in light of 1) its prior determinations that the controversy was within its original and exclusive jurisdiction and no preclusive effect should be accorded to the proceedings before the Illinois District Court, and 2) the extraordinary powers conferred upon the Special Court by Section 209(g) of the Rail Act, 45 U.S.C. § 719(g)?

ADDITIONAL STATUTORY PROVISIONS INVOLVED AND RELEVANT PORTIONS OF THE FINAL SYSTEM PLAN.

Since this Court's last consideration of the Rail Act (*Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974)), there have been two major series of amendments to the Act: (Railroad Revitalization and Regulatory Reform Act of 1976, P.L. 94-210, February 5, 1976 ("Reform Act"); Rail Transportation Improvement Act of 1976, P.L. 94-555, October 19, 1976 ("Improvement Act")) and some minor ones. The amendments effected by the Improvement Act do not bear on the present controversy, nor do the several intervening minor amendments. Thus, the changes in the original Rail Act which are of relevance here are those effected by the Reform Act. In addition to the statutory provisions reprinted in Appendix A of the Petition, several additional sections of the Rail Act, as amended, are reprinted in Appendix A to this Brief in Opposition. In addition, in Appendix B, all relevant portions of the Final System Plan, as promulgated by USRA and adopted by Congress, are reprinted.

COUNTERSTATEMENT OF THE CASE.

At the heart of the present controversy is Petitioners' dissatisfaction with that aspect of the Rail Act planning process, and its implementation, which relates to the through movement of coal traffic from the Southern Illinois coal fields to the Chicago area.

In enacting the Rail Act, Congress found that one of the reasons for the inability of the trustees of the bankrupt roads to formulate acceptable plans of reorganization was that the rail lines had "been permitted to deteriorate and now require extensive rehabilitation and modernization." Section 101(a)(2), 45 U.S.C. § 701(a)(2). Among the purposes of the Act were the identification of those parts of the rail system which would be "adequate to meet the needs and service requirements of [the] region and of the national rail transportation system", and a "reorganization of railroads in this region into an economically viable system capable of providing adequate and efficient rail service to the region." Sections 101(b)(1) & (2), 45 U.S.C. §§ 701(b)(1) & (2).

In designing a final system plan, USRA was charged with preparing "an economic and operational study and analysis of" various relevant factors relating to the provision of rail services (Section 202(b)(2), 45 U.S.C. § 712(b)(2)), and to "consider methods of achieving economies in the cost of rail system operations in the region, including consolidation, pooling, and joint use or operation of lines, facilities, and operating equipment; relocation; rehabilitation and modernization of equipment, track, and other facilities; and abandonment of lines consistent with meeting needs and service requirements . . ." Section 202(b)(5), 45 U.S.C. § 712(b)(5).

In the preliminary planning process, USRA specifically studied the movement of coal traffic from Southern Illinois

to the Chicago port area. And in addition to USRA's work, extensive public hearings were held by the Rail Services Planning Office of the ICC (*See* Section 205, 45 U.S.C. § 715). In those hearings Petitioners here were given a full opportunity to present their views on the possible inclusion of various rail lines within the Final System Plan.

One of the several rail routes serving the coal traffic was a line of the Penn Central known as the Cairo Branch. But, as the Special Court noted,[1] USRA concluded that a portion of that line (some 63 miles of the Cairo Branch) was "in a terrible state of repair" and that significant sums would have to be expended to upgrade it to permit efficient handling of through traffic. In keeping with the purposes of the Rail Act, and the Congressional directive to USRA in Section 202 of the Act, 45 U.S.C. § 712, USRA determined that because of the excellent condition of the L&N route, the more efficient method of moving the coal traffic would be in part via a trackage rights arrangement between Conrail and the L&N.[2]

Thus the Final System Plan promulgated by USRA did not provide for the certification of the portion of the Cairo Branch from Lawrenceville, Illinois to Paris, Illinois, for conveyance to Conrail unless the trackage rights arrangement with the L&N could not be concluded. Rather, that portion of the line was to be subject to abandonment by the Penn Central unless a State or other eligible body chose to subsidize operations over it as a light density line. *See* Section 304, 45 U.S.C. § 744.

The Final System Plan was thereafter specifically approved by Congress in the Reform Act amendments to the

1. Slip Opinion at App. 13a-16a. The Slip Opinion of the Special Court is reprinted in and here cited to the Appendix of the Petition for Certiorari as "Slip Opinion at App. —."

2. *See* Volume I Final System Plan ("FSP") at 29-30, 334, reprinted in App. B of the Brief at pp. 1b-3b.

Rail Act.[3] But in those same amendments Congress also provided procedures for the certification by USRA of additional lines for conveyance to Conrail if, upon further study, it found that such conveyances would better "achieve the efficient implementation of the final system plan;" Section 208(d)(3)(i), 45 U.S.C. § 718(d)(3)(i). And States were separately given the right to petition USRA to make further designations prior to certifications to the Special Court if:

> ". . . such designations (A) are likely to result in improved rail service on such rail properties, and connecting rail properties, and (B) would not materially impair the profitability of [Conrail]." Section 208 (d)(2), 45 U.S.C. § 718(d)(2).

While it was a matter of dispute below whether the Conrail-L&N trackage rights agreement was timely entered into within the meaning of Section 206(d)(4) of the Rail Act, 45 U.S.C. § 716(d)(4), there is no contention that the provisions cited above did not provide Illinois with an opportunity, *after* the agreement was concluded, to seek designation of the balance of the Cairo Branch.

No additional designation was sought by any Petitioner or made by USRA, however, and the segment of the rail line in dispute was not certified for conveyance, nor, of course, was it ordered conveyed to Conrail by the Special Court. Thus, the segment of line remains the property of the Penn Central. Moreover, prior to the April 1, 1976 conveyance date, Illinois recognized that the segment would *not* be conveyed, and began negotiation of a subsidy agreement with the Department of Transportation to prevent abandonment of the line. On March 29, 1976, it then

3. Section 208(d)(1) of the Rail Act, 45 U.S.C. § 718(d)(1), was added by Section 601(e) of the Reform Act.

entered into an operating agreement with Conrail appointing Conrail as the "designated operator"[4] of the line segment in issue as a light density line which, but for this agreement, would have been abandoned.

It was only after conveyance that Petitioners launched their campaign to alter these arrangements, first through the initiation of litigation in the United States District Court for the Eastern District of Illinois, and thereafter through actions taken by Illinois before the ICC and through a demand for commercial arbitration. The thrust of Petitioners' efforts has been to seek to bar Conrail from moving through, coal train traffic over the L&N (via trackage rights) and instead, to require Conrail to initiate the through train service over the Penn Central route, now under subsidy.[5]

4. *See* Section 304(d)(1) of the Rail Act, 45 U.S.C. § 744 (d)(1).

5. Petitioners have now twice informed this Court that *Conrail* operated the freight service over the Cairo Branch prior to April 1, 1976. Petition, p. 9, and Reply Memorandum of Petitioners in Support of the Application for Stay of Injunction, p. 2. Conrail operated no trains anywhere prior to the April 1, 1976 conveyance orders of the Special Court under Section 303(b) of the Rail Act, 45 U.S.C. § 743(b).

ARGUMENT.

The pivotal question in the litigation below is whether the controversy between the parties is one committed by Congress to the original and exclusive jurisdiction of the Special Court. The Special Court concluded that the controversy was one solely within its jurisdiction, and whether this Court should regard that determination as worthy of review (and it should not) is the dispositive issue. Neither of the other two questions presented in the Petition warrants more than brief consideration.

I.

Neither the Second Nor Third Question Presented in the Petition Warrants Consideration by This Court.

Had the Special Court determined that the controversy was not committed to its original and exclusive jurisdiction, then neither of the other two questions addressed by Petitioners would have arisen. There would have been no need separately to consider the effect to be given to the decision rendered by the United States District Court for the Eastern District of Illinois, nor would a preliminary injunction have issued, the principal purpose of which is to protect the Special Court's exclusive jurisdiction. Were this Court, then, to review and reverse the Special Court's jurisdictional decision, the other two questions would, as a practical matter, be moot and review by this Court would be unwarranted as advisory only.[6]

6. In addition, in its Opinion, the Special Court refrained from determining whether its jurisdiction under Section 209(b), 45 U.S.C. § 719(b), was also invoked, and whether that grant of jurisdiction was exclusive or concurrent. Hence, review and reversal by this Court of the Special Court's jurisdictional determination could require additional proceedings on remand to consider the possible effect of Section 209(b), and, assuming jurisdiction under Section

If, as we strongly urge, the Special Court properly determined its jurisdiction, the other two questions remain in the case; but they are not of a nature, nor are they framed in a manner, worthy of this Court's review.

The Special Court's conclusion not to accord preclusive effect to the decision rendered by the Illinois District Court correctly applied prior decisions by this Court. Given the statutory context reviewed at length by the Special Court (*see* App. 21a-27a), the Court rightly determined to follow *Kalb v. Feuerstein*, 308 U.S. 433 (1940); and its decision does not enlarge upon the *Kalb* exception to the general formulation of *res judicata* principles in *Stoll v. Gottlieb*, 305 U.S. 165 (1938). Put differently, the decision below provides no basis for further defining the boundary between *Kalb* and *Stoll*, even were this Court otherwise disposed in an appropriate case to readdress the subject.[7]

6. (Cont'd.)
209(b), (1) what weight should then be accorded the Illinois District Court findings (given the reorganization aspect of the Special Court's proceedings), and (2) the propriety of preliminary injunctive relief. *Cf. New Haven Inclusion Cases*, 399 U.S. 392, 428-29 (1970); *Warren v. Palmer*, 310 U.S. 132, 138-49 (1940).

7. *See also* U.S. v. U.S. Fidelity & Guaranty Co., 309 U.S. 506, 514-15 (1940); Vallely v. Northern Fire Ins. Co., 254 U.S., 348, 353-54 (1920); Williamson v. Berry, 49 U.S. (8 How.) 495, 541 (1850); Elliot v. Lessee of Peirsol, 26 U.S. (1 Pet.) 328, 340 (1828); United States v. Ohio, 487 F.2d 936, 943 (Temp. Emerg. Ct. App. 1973) (alternative holding), *cert. denied* 421 U.S. 1014 (1975); In re Penn Central Transportation Company, 384 F. Supp. 895, 914-15 (Sp. Ct. RRRA 1974). Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371 (1940), relied on by Petitioners (but decided the same day as *Kalb, supra*), does not require a different result. There, this Court asserted the applicability of general *res judicata* principles in the absence of any indication of specific Congressional intent to exercise its bankruptcy power. Though not the only distinction, this Court has previously determined that the Rail Act is valid as legislation pursuant to that power. Regional Rail Reorganization Act Cases, 419 U.S. 102, 152-56 (1974). *See generally* Dobbs, *The Validation of Void Judgments: The Bootstrap Principle*, 53 VA. L. REV. (Part I) 1003, (Part II) 1241 (1967).

The propriety of issuance of a preliminary injunction in the proceedings below is equally unworthy of discretionary review. Petitioners do not question the standard governing issuance of the injunction which was adopted by the Special Court (*see* Petition, at 18). Rather, with one exception, they question merely the factual support for the Special Court's conclusions or its application of those facts to the standard, hardly the type of question comprehended within the considerations set forth in Rule 19.[8] The one substantive point raised is whether Conrail is likely to prevail on the merits at the final hearing. The Special Court concluded that Conrail is likely to prevail because of its determination that the trackage rights agreement between Conrail and the L&N was timely "entered into and concluded" as a matter of federal law within the meaning of Section 206(d)(4) of the Rail Act, 45 U.S.C. § 716(d)(4).[9]

Quite apart from the correctness of the Special Court's decision as to the meaning of Section 206(d)(4) (*see* App. 28a-30a), the question is not an important question of federal law which needs to be "settled" by this Court. On the contrary, it is a narrow question, framed by the unique facts of this case, and unlikely to again arise. Its resolution here is properly entrusted to the Special Court.

8. In any case, the standard of review would be narrow, whether the court below abused its discretion. *See* Doran v. Salem Inn, Inc., 422 U.S. 922, 931-32 (1975); Brown v. Chote, 411 U.S. 452, 457 (1973). This Court has rightly not been prone to expend its resources on searching records for the adequacy of factual support for application of unchallenged legal principles.

9. Illustrative, perhaps, of the need seen by Congress for one "special court" to oversee critical litigation affecting implementation of the Final System Plan is the fact that the Illinois District Court reached its decision as to non-compliance with Section 206(d)(4) in part based upon its application of the Illinois parol evidence rule. App. 41a-42a. The Special Court saw the need for selecting a uniform federal rule of decision in construing the meaning of the Rail Act. Slip Opinion at App. 28a-29a, and n. 14.

Finally, whatever the usual standards for the issuance of a preliminary injunction, once the Special Court determined that the controversy was within its original and exclusive jurisdiction, Section 209(g) of the Rail Act, 45 U.S.C. § 719(g), provides independent and virtually conclusive support for the issuance of the injunction against further proceedings in another forum. The power granted to the Special Court in Section 209(g) to stay proceedings elsewhere in order to prevent disruption of the ongoing process of reorganization of the Northeast rail system is a strong indication of the importance attached by Congress to insuring completion of the process. But more crucial here, it is an equally strong indicator of the significance attached by Congress to the role of the Special Court in achieving the reorganization. Congress could have relied on its grant of the powers of a reorganization court to the Special Court (*see* Section 209(b), 45 U.S.C. § 719(b)) to bar disruptive litigation elsewhere, but in choosing to add the very explicit powers of Section 209(g), it left no question as to the extraordinary role (and power) it was conferring on the Special Court. There can be no question that the litigation initiated by Petitioners in the Eastern District of Illinois is, in the terms of Section 209(g), a "proceeding [that] . . . impairs the effective implementation" of the Rail Act or "interferes with the execution" of the Special Court's orders of conveyance. Section 209(g) explicitly empowers the Special Court to enjoin any such proceeding. There could thus be no conceivable abuse of discretion in the entry of the order below, particularly since it does not bar further litigation on the merits of the controversy, but merely requires that the merits be addressed by the Petitioners at the final hearing in the Special Court, not elsewhere.

II.

The Controversy Below Was One Within the Original and Exclusive Jurisdiction of the Special Court and no Purpose Would Be Served by Review of That Conclusion.

Admittedly, the scope of the Special Court's original and exclusive jurisdiction, if viewed in general terms, is an important question of federal law, at least insofar as insuring accomplishment of the purposes of the Rail Act is concerned. And it is equally true that this Court has not had occasion heretofore to address problems arising in connection with that jurisdictional grant. But there is utterly no reason why the specific question posed in this case "should be" addressed by this Court (*see* Rule 19). The Special Court found that it had original and exclusive jurisdiction because the controversy involved a challenge to ". . . the legality of any action of the Association, or any failure of the Association to take any action, pursuant to authority conferred or purportedly conferred under [the Rail Act]", within the meaning of Section 209(e)(1)(C), 45 U.S.C. § 719(e)(1)(C). *See* Slip Opinion at App. 16a-20a. More precisely, the Court concluded that the position of Petitioners necessarily challenged at least two failures of USRA to designate and certify for conveyance to Conrail the rail line segment in issue. Given USRA's explicit and extended treatment of the subject of how best to move coal traffic from Southern Illinois to the Chicago area, including provision for alternative designations of the Penn Central line to Conrail if the L&N trackage rights agreement was not timely "entered into and concluded" (*see* Vol. I FSP at pp. 29-30, 334; Vol. II FSP at pp. 65-69), the Special Court need not have looked beyond the Final System Plan to conclude that the matter was within its jurisdiction. But the Spe-

cial Court also took account of the additional opportunities afforded by Sections 208(d)(2) and 208(d)(3)(A), 45 U.S.C. §§ 718(d)(2) and 718(d)(3)(A), for accomplishment of the purposes of Petitioners through additional designations and certification for conveyance to Conrail by USRA, as further evidence of the implication in the controversy of failures by USRA to "take any action" within Section 209(e)(1)(C), 45 U.S.C. § 719(e)(1)(C).

Respondents firmly believe these conclusions by the Special Court were sound, but the legitimacy of the decision reached is only one reason why this Court should not invoke its discretionary power of review. The fact is that the jurisdictional question is presented in a highly individualized factual context; and the key to the conclusions reached by the Special Court lies in its application of the facts to the jurisdictional grant. Were this Court to review that application, no rule of general importance would emerge. Instead, review would entail the same examination of the treatment of the subject in the Final System Plan as the Court below undertook, and even in the unlikely event this Court were to disagree with the result reached, its decision would be limited to those facts.

To put the matter more generally, Petitioners are not contesting any general proposition such as the right of Congress to invest inferior federal courts with the "exact degrees and character [of jurisdiction] which to Congress may seem proper for the public good." That proposition was established in *Lockerty v. Phillips*, 319 U.S. 182, 187 (1943), if not before. Instead, Petitioners seek a review of the "exact degrees and character" of the Special Court's jurisdiction as applied to their facts. In such a context, nothing would be gained by this Court's extended consideration of the issues. To affirm would at most reinforce what is already evident from the Act and its legislative history, namely, that Congress intended the Special Court to

exercise broad powers and to utilize its special expertise in insuring completion and avoiding disruption of the Congressional plan.[10] And to reverse would establish only this Court's disagreement with the Special Court that the grant of original and exclusive jurisdiction reached this particular challenge to the manner in which USRA's planning of the movement of coal trains in Illinois was implemented.

This Court is not a court which sits merely to provide an appellate forum for the correction of supposed errors, and there is even less reason to believe it should perform such a role in those cases arising under the Rail Act in which review is discretionary. If any "error" was committed below, and none was, it favored the orderly implementation of the restructuring of the Northeast railroads, the principal Congressional concern in the passage of the Act. A declination to reexamine the Special Court's decision would not disserve that national policy.

In addressing solely the question whether the writ should be granted, respondents have refrained from commenting on much of what Petitioners have written concerning the Special Court's jurisdiction and other subjects. But that silence should not be misunderstood as agreement with the Petitioners' somewhat distorted view of the legislative history and meaning of Section 209(e) of the Rail Act, 45 U.S.C. § 719(e) (*see* Petition at pp. 9-15), or with many of Petitioners' factual characterizations and refer-

10. *See* Conference Report, S. Rep. No. 595, 94th Cong., 2d Sess. 187-88 (1976), *reprinted in* 1976 U.S. Code Cong. & Ad. News 194-95, H.R. Rep. No. 781, 94th Cong., 2d Sess. 187-88 (1976); S. Rep. No. 499, 94th Cong., 1st Sess. 83-85 (1975), *reprinted in* 1976 U.S. Code Cong. & Ad. News 90-92; H.R. Rep. No. 925, 94th Cong., 1st Sess. 128 (1975). *See also* Conference Report, H.R. Rep. No. 744, 93rd Cong., 1st Sess. (1973), *reprinted in* 1973 U.S. Code Cong. & Ad. News 3320-23; S. Rep. No. 601, 93rd Cong., 1st Sess. (1973), *reprinted in* 1973 U.S. Code Cong. & Ad. News 3244; 119 Cong. Rec. S. 23780 (daily ed. December 21, 1973) (remarks of Senator Javits).

ences to the "record" below and in the Illinois District Court. A detailed rebuttal is simply unnecessary at this stage.

CONCLUSION.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A.

STATUTES.

Section 101(a)(2), Regional Rail Reorganization Act of 1973, as amended, 45 U.S.C. § 701(a)(2):

> This essential rail service is threatened with cessation or significant curtailment because of the inability of the trustees of such railroads to formulate acceptable plans of reorganization. This rail service is operated over rail properties which were acquired for a public use, but which have been permitted to deteriorate and now require extensive rehabilitation and modernization.

Section 101(b)(1), Regional Rail Reorganization Act of 1973, as amended, 45 U.S.C. § 701(b)(1):

> the identification of a rail service system in the midwest and northeast region which is adequate to meet the needs and service requirements of this region and of the national rail transportation system;

Section 101(b)(2), Regional Rail Reorganization Act of 1973, as amended, 45 U.S.C. § 701(b)(2):

> the reorganization of railroads in this region into an economically viable system capable of providing adequate and efficient rail service to the region;

Section 202(b)(2), Regional Rail Reorganization Act of 1973, as amended, 45 U.S.C. § 712(b)(2):

> prepare an economic and operational study and analysis of present and future rail and express service

needs in the region; the nature and volume of the traffic in the region now being moved by rail and express or likely to be moved by rail and express in the future; the extent to which available alternative modes of transportation could move such traffic as is now carried by railroads in reorganization; the relative economic, social, and environmental costs that would be involved in the use of such available alternative modes, including energy resource costs; and the competitive or other effects on profitable railroads.

Section 202(b)(5), Regional Rail Reorganization Act of 1973, as amended, 45 U.S.C. § 712(b)(5):

consider methods of achieving economies in the cost of rail system operations in the region including consolidation, pooling, and joint use or operation of lines, facilities, and operating equipment; relocation; rehabilitation and modernization of equipment, track, and other facilities; and abandonment of lines consistent with meeting needs and service requirements; together with the anticipated economic, social, and environmental costs and benefits of each such method;

Section 205, Regional Rail Reorganization Act of 1973, as amended, 45 U.S.C. § 715:

RAIL SERVICES PLANNING OFFICE

(a) *Establishment.*—The Rail Services Planning Office is established as an office in the Commission. The Office shall function continuously pursuant to the provisions of this Act, and shall be administered by a director.

(b) *Director.*—The Director of the Office shall be appointed for a term of 6 years by the Chairman of the Commission with the concurrence of 5 members

of the Commission. He shall be appointed and compensated, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, classification, and General Schedule pay rates, at a rate not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title. The Director of the Office shall administer and be responsible for the discharge of the functions and duties of the Office from the date he takes office unless removed for cause by the Commission.

(c) *Powers.*—The Director of the Office is subject to the direction of, and shall report to, such member of the Commission as the Chairman thereof shall designate. The Chairman may designate himself as that member. Such Director is authorized, with the concurrence of such member or (in case of disagreement) the Chairman of the Commission, to enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5) such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions and duties of the Office with any person (including a government entity). Each department, agency, and instrumentality of the executive branch of the Federal Government and each independent regulatory agency of the United States is authorized, and shall give careful consideration to a request, to furnish to the Director of the Office, upon written request, on a reimbursable basis or otherwise, such assistance as the Director deems necessary to carry out the functions and duties of the Office. Such assistance includes transfer of personnel with their consent and without prejudice to their position and rating.

(d) *Duties.*—In addition to its duties and responsibilities under other provisions of this Act and under the Railroad Revitalization and Regulatory Reform Act of 1976, the Office shall—

(1) assist the Commission in studying and evaluating any proposal, submitted to the Commission pursuant to section 5(2) or (3) of the Interstate Commerce Act (49 U.S.C. 5(2) or (3)), for a merger, consolidation, unification or coordination project, joint use of tracks or other facilities, or acquisition or sale of assets, which involves any common carrier by railroad subject to part I of such Act;

(2) assist the Commission in developing, with respect to economic regulation of transportation, policies which are likely to result in a more competitive, energy-efficient, and coordinated transportation system which utilizes each mode of transportation to its maximum advantage to meet the transportation service needs of the Nation;

(3) assist States and local and regional transportation agencies in making determinations whether to provide rail service continuation subsidies to maintain in operation particular rail properties, by establishing criteria for determining whether particular rail properties are suitable for rail service continuation subsidies, with such criteria to include the following considerations: rail properties are suitable if the cost of the required subsidy for such properties per year to the taxpayers is less than (A) the cost of termination of rail service over such properties measured by increased fuel consumption and

operational costs for alternative modes of transportation, (B) the cost to the gross national product in terms of reduced output of goods and services, (C) the cost of relocating or assisting through unemployment, retraining, and welfare benefits to individuals and firms adversely affected thereby, and (D) the cost to the environment measured by damage caused by increased pollution;

(4) conduct an ongoing analysis of the national rail transportation needs, evaluate the policies, plans, and programs of the Commission on the basis of such analysis, and advise the Commission of the results of such evaluation;

(5) within 180 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, issue additional regulations, after conducting a proceeding in accordance with the provisions of section 553 of title 5, United States Code, which contain—

(A) standards for the computation of subsidies for rail passenger service (except passenger service compensation disputes subject to the jurisdiction of the Commission under section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a)), which are consistent with the compensation principles described in the final system plan and which avoid cross subsidization among commuter, intercity, and freight rail services; and

(B) standards for the determination of emergency commuter rail passenger service operating payments pursuant to section 17

of the Urban Mass Transportation Act of 1964;

(6) determine and publish, and from time to time revise and reissue, standards for determining (A) the "revenue attributable to the rail properties", (B) the "avoidable costs of providing service", (C) a "reasonable return on the value", and (D) a "reasonable management fee", as those phrases are used in section 304 of this Act, after a proceeding in accordance with the provisions of section 553 of title 5, United States Code; and

(7) employ and utilize the services of attorneys and such other personnel as may be required in order properly to protect the interests of those communities and users of rail service which, for whatever reason (such as their size or location) might not otherwise be adequately represented in the course of the reorganization process under this Act, until the assumption of such duties by the Office of Rail Public Counsel pursuant to section 26b(4)(d) of the Interstate Commerce Act (49 U.S.C. 26b(4)(d)).

(e) *Additional duties.*—

(1) Within 270 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, the Office shall issue additional regulations, after conducting a proceeding in accordance with section 553 of title 5, United States Code. Such regulations shall (A) develop an accounting system which will permit the collection and publication by the Corporation or by profitable railroads providing service over

lines scheduled for abandonment, of information necessary for an accurate determination of the attributable revenues, avoidable costs, and operations of light density lines as operating and economic units, and (B) determine the "avoidable cost of providing rail freight service", as that phrase is used in section 1a(6)(a)(ii)(A) of the Interstate Commerce Act. The Office may, at any time, revise and republish the standards and regulations required by this section to incorporate changes made necessary by the accounting system developed pursuant to this subsection.

(2) Upon the request of a State in the region, within 90 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, the Office shall prepare and publish an evaluation of the economic viability of any or all light density lines within such State which are not designated for inclusion in the final system plan. Such an evaluation shall include an analysis of the actions which may be necessary to make the operation of rail services over any such line economical. The results of each such evaluation shall be transmitted to the requesting State and published in the Federal Register, not later than 1 year after the date such request is received by the Office.

Section 303(b), Regional Rail Reorganization Act of 1973, as amended, 45 U. S. C. § 743(b):

(b) *Conveyance of rail properties.*—

(1) The special court shall, within 10 days after deposit under subsection (a) of this section of the securities of the Corporation, certificates of value is-

sued by the Association, and compensation from the profitable railroads operating in the region, States, and responsible persons, order the trustee or trustees of each railroad in reorganization in the region to convey forthwith to the Corporation or any subsidiary thereof, the respective profitable railroads operating in the region, States, and responsible persons all right, title, and interest in the rail properties of such railroad in reorganization and shall itself order the conveyance of all right, title, and interest in the rail properties of any person leased, operated, or controlled by such railroad in reorganization that are to be conveyed to them under the final system plan as certified to such court under section 209(d) of this Act. In any case where the special court orders the trustee or trustees of a railroad in reorganization in the region to execute and deliver deeds or other instruments conveying rail properties to the Corporation or a subsidiary thereof or to a profitable railroad operating in the region or a State or responsible person, those deeds or other instruments may be executed, acknowledged, and delivered on behalf of the trustee or trustees by any person or persons who have been duly authorized to perform such acts on behalf of the trustee or trustees by the district court of the United States or any other court having jurisdiction over the respective railroad in reorganization in the region. Notwithstanding any provision of State or local law, in any case where deeds or other instruments have been executed, acknowledged, or delivered by a representative of the trustee or trustees of a railroad in reorganization in the region in accordance with the previous sentence, such execution, acknowledgment, and delivery, and the deeds or other instruments to which they pertain, shall have the same legal effect as they would have had if the trustee or trustees had themselves executed, acknowledged and delivered such deeds or other instruments.

(2) All rail properties conveyed to the Corporation or any subsidiary thereof, the respective profitable railroads operating in the region, States, and responsible persons under this section shall be conveyed free and clear of any liens or encumbrances, but subject to such leases and agreements as shall have previously burdened such properties or bound the owner or operator thereof in pursuance of an arrangement with any State, or local or regional transportation authority under which financial support from such State, or local or regional transportation authority was being provided at the time of enactment of this Act for the continuance of rail passenger service or any lien or encumbrance of no greater than 5 years' duration which is necessary for the contractual performance by any person of duties related to public health or sanitation. Such conveyances shall not be restrained or enjoined by any court.

(3)(A)(i) Notwithstanding any other provision of this Act, if an interest in railroad rolling stock is included in the rail properties conveyed pursuant to subsection (b)(1) of this section, and if such conveyance is in accordance with the requirements of clause (ii) of this subparagraph, the conveyance of such properties shall be deemed an assignment. Any such assignment shall relieve the assignor of liability for any breach which occurs after the date of such conveyance, except that such assignor shall remain liable for any breach, event of default, or viola-

tion of covenant which occurred (and any charges or obligations which accrued) prior to the date of such conveyance, regardless of whether the assignee thereof assumes such liabilities, charges or obligations. If any such liabilities, charges, or obligations (accrued prior to the date of such conveyance) are paid by or on behalf of any person or entity other than such assignor, such person or entity shall have a claim to direct reimbursement, as a current expense of administration, from such assignor, together with interest on the amount so paid.

(ii) A conveyance referred to in clause (i) of this subparagraph may be effected only if—

(I) the Corporation or a subsidiary thereof, the profitable railroad operating in the region, or the State or responsible person to whom such conveyance is made assumes all of the obligations under any applicable conditional sale agreement, equipment trust agreement, or lease with respect to such rolling stock (including any obligations which accrued prior to the date on which such properties are conveyed), and

(II) such conveyance is made subject to such obligations.

As used in this subparagraph, the term "railroad rolling stock" means assets which could be carried in Interstate Commerce Commission account numbers 52, 53, 54, and 57.

(B) Subject to the provisions of this paragraph, the provisions of this Act shall not affect the title and interests of any lessor, equipment

trust trustee, or conditional sale vendor under any conditional sale agreement, equipment trust agreement, or lease under section 77(j) of the Bankruptcy Act (11 U.S.C. 205(j)). A profitable railroad operating in the region, the Corporation or a subsidiary thereof, or a State or responsible person, to whom such a conveyance is made as assignee or as lessee, shall assume all liability under such conditional sale agreement, equipment trust agreement, or lease. Such an assignment or conveyance to, and such an assumption of liability by, such a profitable railroad, Corporation, subsidiary, State, or responsible person shall not be deemed a breach, an event of default, or a violation of any covenant of any such conditional sale agreement, equipment trust agreement, or lease so assigned or conveyed, notwithstanding any provisions of any such agreement or lease.

(4) Notwithstanding anything to the contrary contained in this Act, if a railroad in reorganization has leased rail properties from a lessor that is neither a railroad nor controlled by or affiliated with a railroad, and such lease has been approved by the lessee railroad's reorganization court prior to the date of enactment of this Act, conveyance of such lease may only be effected if the Corporation, profitable railroad, State, or responsible person to whom the conveyance is made assumes all future liability under such lease and all of the terms and conditions specified in the lease, including the obligation to pay the specified rent to the non-railroad lessor.

(5) Notwithstanding any covenant, undertaking, condition, or provision of any sort in any lease, agree-

ment, or contract, the conveyance, transfer, assignment, or other disposition of such lease, agreement, or contract or of any interest therein to, or the assumption by, the Corporation or any subsidiary thereof, or a profitable railroad of obligations thereunder, shall not be deemed a breach, an event of default, or a violation of any covenant of such lease, agreement, or contract.

(6) Notwithstanding anything to the contrary contained in this Act or any other provision of law, the special court shall include in its order such further directions as may be necessary to assure (A) that the operation and administration of the employee pension benefit plans described in section 505(a) of this Act shall be continued, without termination or interruption, by the Corporation until such time as the Corporation elects to amend or terminate any such plan, in whole or in part; and (B) that appropriate transfers and assignments with respect to all rights and obligations relating to such plans shall be made to the Corporation for such purposes, without prejudice to payment of consideration for whatever rights any railroad in reorganization may have in any residual assets under any such employee pension benefit plan. No court shall enter any judgment against the Corporation with respect to any such rights, except that the special court may enter such a judgment in an order issued by it pursuant to subsection (c) of this section, after taking into consideration the rights and obligations transferred pursuant to this paragraph. All liabilities as an employer shall be imposed solely upon the railroad in reorganization in the event such plan is terminated, in whole or in part, by the Corporation within 1 year after the date of such transfer or assignment (except liabilities as an employer under the Employee Retirement Income Security Act of 1974 for benefits accruing during such period), except that in any case in which the Corporation, on or after the date of transfer or assignment as provided by this paragraph, terminates in whole or in part any such plan, the benefits under which are not guaranteed under title IV of the Employee Retirement Income Security Act of 1974, the Corporation shall guarantee the payment when due of the accrued pension benefits provided for thereunder at the time of termination. The Corporation shall be entitled to a loan pursuant to section 211(h) of this Act in an amount required for the adequate funding of accrued pension benefits under all plans transferred or assigned to the Corporation in accordance with this paragraph (whether or not terminated by the Corporation). For purposes of such section 211(h) and notwithstanding any other provision of Federal or State law, amounts required for such adequate funding shall be deemed to be expenses of administration of the respective estates of the railroads in reorganization, due and payable as of the date of transfer or assignment of the plans to the Corporation.

Section 304, Regional Rail Reorganization Act of 1973, as amended, 45 U.S.C. § 744:

(a) *Discontinuance.*—

(1) Except as provided in subsections (c) and (f) of this section, rail service on rail properties of a railroad in reorganization in the region, or of a person leased, operated, or controlled by such a railroad, which transfers to the Corporation or to profitable railroads operating in the region all or substantially all of its rail properties designated for such conveyance in the final sys-

tem plan, and rail service on rail properties of a profitable railroad operating in the region which transfers substantially all of its rail properties to the Corporation or to other railroads pursuant to the final system plan, may be discontinued, to the extent such discontinuance is not precluded by the terms of the leases and agreements referred to in section 303(b)(2) of this title, if–

(A) the final system plan does not designate rail service to be operated over such rail properties;

(B) not sooner than 30 days following the effective date of the final system plan, the trustee or trustees of the applicable railroad in reorganization or a profitable railroad give notice in writing of intent to discontinue such service on a date certain which is not less than 60 days after the date of such notice or on the date of any conveyance ordered by the special court pursuant to section 303 (b)(1) of this title, whichever is later; and

(C) the notice required by subparagraph (B) of this paragraph is sent by certified mail to the Commission; to the chief executive officer, the transportation agencies, and the government of each political subdivision of each State in which such rail properties are located; and to each shipper who has used such rail service during the previous 12 months.

(2) (A) If rail properties are not, in accordance with the designations in the final system plan, required to be operated, as a consequence of a recommended arrangement for point use or operation of rail properties (under section 206(g) of this Act) or as part of a coordination project (under sections 206(c) and (g) of this Act), rail service on such properties may be discontinued, subsequent to the date of conveyance of rail properties pursuant to such section 303(b)(1), if the Commission determines that such rail service on such rail properties is not compensatory and if–

(i) the petitioner and any other railroad involved in such arrangement or coordination project have, prior to filing an application for such discontinuance, entered into a binding agreement (effective on or before the effective date of such discontinuance) to carry out such arrangement or project;

(ii) such application is filed with the Commission not later than 1 year after the effective date of the final system plan; and

(iii) such discontinuance is not precluded by the terms of the leases and agreements referred to in such section 303(b)(2).

(B) For purposes of this paragraph, rail service on rail properties is compensatory if the revenue attributable to such properties from such service equals or exceeds the sum of the avoidable costs of providing such service on such properties plus

a reasonable return on the value of such rail properties, as determined in accordance with the standards developed pursuant to section 205(d)(6) of this Act.

(C) The Commission shall make its final determination, with respect to any discontinuance requested under this paragraph, not later than 120 days after the date of filing of an application therefor. The applicant shall have the burden of proving that the service involved is not compensatory. If the Commission fails to make a final determination within such time, the application shall be deemed to be granted.

(D) The Commission may issue such rules, regulations, and procedures as it deems necessary for the conduct of its functions under this paragraph.

(b) *Abandonment.*–

(1) Except as provided in subsections (c) and (f) of this section, rail properties over which rail service has been discontinued under subsection (a) of this section may not be abandoned sooner than 120 days after the effective date of the discontinuance. Thereafter, except as provided in subsection (c) of this section, such rail properties may be abandoned upon 30 days' notice in writing to any person (including a government entity) required to receive notice under subsection (a)(1)(C) of this section.

(2) In any case in which rail properties proposed to be abandoned under this section are designated by the final system plan as rail properties which are suitable for use for other public purposes (including roads or highways, other forms of mass transportation, conservation, and recreation), such rail properties shall not be sold, leased, exchanged or otherwise disposed of during the 240-day period beginning on the date of notice of proposed abandonment under this section unless such rail properties have first been offered, upon reasonable terms, for acquisition for public purposes.

(3) Rail service may be discontinued, under subsection (a) of this section, and rail properties may be abandoned, under this section, notwithstanding any provision of the Interstate Commerce Act, the constitution or law of any State, or the decision of any court or administrative agency of the United States or of any State.

(c) *Continuance of Rail Services.*–No rail service may be discontinued and no rail properties may be abandoned, pursuant to this section–

(1) in the case of service and properties referred to in subsections (a)(1) and (b)(1) of this section, after 2 years from the effective date of the final system plan or more than 2 years after the date on which the final rail service continuation payment is received, whichever is later; or

(2) if a financially responsible person (including a government entity) offers–

(A) to provide a rail service continuation payment which is designed to cover the difference between the revenue attributable to such rail properties and the avoidable costs of providing rail service on such prop-

erties, together with a reasonable return on the value of such properties;

(B) to provide a rail service continuation payment which is payable pursuant to a lease or agreement with a State or with a local or regional transportation authority under which financial support was being provided on January 2, 1974 for the continuation of rail passenger service; or

(C) to purchase, pursuant to subsection (f) of this section, such rail properties in order to operate rail services thereon.

If a rail service continuation payment is offered, pursuant to paragraph (2)(A) of this subsection, for both freight and passenger service on the same rail properties, the owner of such properties may not be entitled to more than one payment of a reasonable return on the value of such properties.

(d) *Rail freight service.*—

(1) If a rail service continuation payment is offered, pursuant to subsection (c)(2)(A) of this section, for rail freight service, the person offering such payment shall designate the operator of such service and enter into an operating agreement with such operator. The person offering such payment shall designate as the operator of such service—

(A) the Corporation, if rail properties of the Corporation connect with the line of railroad involved, unless the Commission determines that such rail service continuation could be performed more efficiently and economically by another railroad;

(B) any other railroad whose rail properties connect with such line, if the Corporation's rail properties do not so connect or if the Commission makes a determination in accordance with subparagraph (A) of this paragraph; or

(C) any responsible person (including a government entity) which is willing to operate rail service over such rail properties.

A designated railroad may refuse to enter into such an operating agreement only if the Commission determines, on petition by any affected party, that the agreement would substantially impair such railroad's ability to serve adequately its own patrons or to meet its outstanding common carrier obligations. The designated operator shall, pursuant to each such operating agreement (i) be obligated to operate rail freight service on such rail properties, and (ii) be entitled to receive, from the person offering such payment, the difference between the revenue attributable to such properties and the avoidable costs of providing service on such rail properties, together with a reasonable management fee, as determined by the Office.

(2) The trustees of a railroad in reorganization shall permit rail service to be continued on any rail properties with respect to which a rail service continuation payment operating agreement has been entered into under this subsection. Such trustees shall receive a reasonable return on

the value of such properties, as determined in accordance with the standards developed pursuant to section 205(d)(6) of this Act.

(3) If necessary to prevent any disruption or loss of rail service, at any time after the date of conveyance, pursuant to section 303(b)(1) of this title, the Commission—

(A) shall take such action as may be appropriate under its existing authority (including the enforcement of common carrier requirements applicable to railroads in reorganization in the region) to ensure compliance with obligations imposed under this subsection; and

(B) shall have authority, in accordance with the provisions of section 1(16)(b) of the Interstate Commerce Act (49 U.S.C. 1(16)(b)), to direct rail service to be provided by any designated railroad or by the trustees of a railroad in reorganization in the region, if a rail service continuation payment has been offered but an applicable operating or lease agreement is not in effect.

For purposes of the preceding sentence, any compensation required as a result of such directed service shall be determined in accordance with the standards developed pursuant to section 205(d)(6) of this Act. The district courts of the United States shall have jurisdiction, upon petition by the Commission or any interested person (including a government entity), to enforce any order of the Commission issued pursuant to the exercise of its authority under this subsection, or

to enjoin any designated entity or the trustees of a railroad in reorganization in the region from refusing to comply with the provisions of this subsection.

(4) No determination of reasonable payment for the use of rail properties of a railroad in reorganization in the region, and no determination of value of rail properties of such a railroad (including supporting or related documents or reports of any kind) which is made in connection with any lease agreement, contract of sale, or other agreement or understanding which is entered into after the date of enactment of the Rail Transportation Improvement Act—

(A) pursuant to this section; or

(B) pursuant to section 402 of this Act or section 17 of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1613), shall be admitted as evidence, or used for any other purpose, in any civil action, or any other proceeding for damages or compensation, arising under this Act.

(e) *Rail passenger service.*—

(1) The Corporation (or a profitable railroad) shall provide rail passenger service for a period of 180 days immediately following the date of conveyance (pursuant to section 303(b)(1) of this title), with respect to any rail properties over which a railroad in reorganization in the region, or a person leased, operated, or controlled by such a railroad, was providing rail passenger service immediately prior to such date of convey-

ance. Such service shall be provided on such properties regardless of whether or not such properties are designated in the final system plan as rail properties over which rail service is required to be operated, except with respect to properties over which such service is provided by the National Railroad Passenger Corporation.

(2) If a State (or a local or regional transportation authority) was providing financial assistance to support the operation of rail passenger service, pursuant to a lease or agreement which was in effect immediately prior to the date of conveyance (pursuant to such section 303(b)(1)), the Corporation (or a profitable railroad) shall be bound by the service provisions of such lease or agreement for the duration of the 180-day mandatory operation period specified in paragraph (1) of this subsection. If a State or such an authority was providing financial assistance for the continuation of rail passenger service on rail properties immediately prior to such date of conveyance, it shall provide the same level of financial assistance during such 180-day mandatory operation period. If no such financial assistance was being provided or if no such lease or agreement was in effect immediately prior to such date of conveyance, with respect to any such rail properties, the Corporation (or a profitable railroad) shall provide the same level of rail passenger service, for the duration of such 180-day mandatory operation period, that was provided prior to such date by the applicable railroad. If—

(A) such financial assistance is not provided;

(B) a State (or a local or regional transportation authority) has not, by the end of such 180-day mandatory operation period, offered a rail service continuation payment pursuant to subsection (c)(2)(A) of this section;

(C) an applicable rail service continuation payment pursuant to such subsection (c)(2)(A) is not paid when it is due; or

(D) a payment required under a lease or agreement, pursuant to section 303(b)(2) of this title or subsection (c)(2)(B) of this section, is not paid when it is due,

the Corporation (or, where applicable, the National Railroad Passenger Corporation, a profitable railroad, or the trustee or trustees of a railroad in reorganization in the region) may (i) discontinue such rail passenger service, and (ii) with respect to rail properties not designated for inclusion in the final system plan, abandon such properties pursuant to subsections (a) and (b) of this section.

(3) Nothing in this subsection shall be construed to affect the obligation of the Corporation (or a profitable railroad), or of the trustees of the railroads in reorganization in the region, to provide rail passenger service pursuant to section 303(b)(2) of this title or subsection (c)(2)(B) of this section.

(4) If a State (or a local or regional transportation authority)—

(A) offers a rail service continuation payment, pursuant to subsection (c)(2)(A) of the section and under regulations issued by the Office pursuant to section 205(d)(5) of this Act, for the operation of rail passenger service after the 180-day mandatory operation period, and

(B) provides compensation pursuant to paragraph (2) of this subsection, for operations conducted during the 180-day mandatory operation period,

the Corporation (or a profitable railroad) shall continue to provide such service after the end of such period, except as otherwise provided in this subsection.

(5)(A) The Secretary shall reimburse the Corporation (or a profitable railroad) for any loss which is incurred by it during the 180-day mandatory operation period specified in paragraph (1) of this subsection which is not compensated for by a State (or a local or regional transportation authority). The amount of such reimbursement shall be determined pursuant to section 17(a)(1) of the Urban Mass Transportation Act of 1964 and under regulations issued by the Office pursuant to section 205(d)(5) of this Act.

(B) The Secretary shall reimburse States, local public bodies, and agencies thereof for additional costs incurred by such States, bodies, and agencies for rail service continuation payments for rail passenger service pursuant to section 17(a)(2) of the

Urban Mass Transportation Act of 1964 and under regulations issued by the Office pursuant to section 205(d)(5) of this Act.

(C) For purposes of the obligation of the Secretary to reimburse the Corporation (or a profitable railroad) or States, local public bodies, and agencies thereof under subparagraphs (A) and (B) of this paragraph, the level of rail passenger service shall be determined on the basis of train miles, car miles, or some other appropriate indicia of scheduled train movements. Programs to correct deferred maintenance on rolling stock, right-of-way, and other facilities which are designed to maintain service, meet on-time performance, and maintain a reasonable degree of passenger comfort (and costs incurred incident thereto) shall be included within the meaning of the term "loss" as used in subparagraph (A) of this paragraph and within the meaning of the term "additional costs" as used in subparagraph (B) of this paragraph and section 17(a)(2) of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1613(a)(2)).

(D) If a dispute arises with respect to the application of any such regulations, the parties to such dispute may submit such dispute to arbitration by a third party. If the parties are unable to agree upon the selection of an arbitrator, the Chairman of the Commission shall serve in that capacity (except as to matters required to be decided by the Commission, pursuant to section 402(a)

of the Rail Passenger Service Act (45 U.S.C. 562(a)).

(6) Notwithstanding any other provision of this subsection, the Corporation is not obligated to provide rail passenger service on rail properties if a State (or a local or regional transportation authority) contracts for such service to be provided on such properties by an operator other than the Corporation, except that the Corporation shall, where appropriate, provide such operator with access to such properties for such purpose.

(f) *Purchase.*—If an offer to purchase is made under subsection (c)(2)(C) of this section, such offer shall be accompanied by an offer of a rail service continuation payment. Such payment shall continue until the purchase transaction is completed, unless a railroad assumes operations over such rail properties of its own account pursuant to an order or authorization of the Commission. Whenever a railroad in reorganization in the region or a profitable railroad gives notice of intent to discontinue service pursuant to subsection (a) of this section, such railroad shall, upon the request of anyone apparently qualified to make an offer to purchase or to provide a rail service continuation payment, promptly make available its most recent reports on the physical condition of such property, together with such traffic and revenue data as would be required under subpart B of part 1121 of chapter X of title 49 of the Code of Federal Regulations and such other data as are necessary to ascertain the avoidable costs of providing service over such rail properties.

(g) *Abandonment by corporation.*—After the rail system to be operated by the Corporation or a subsidiary thereof under the final system plan has been in operation for 2 years, the Commission may authorize the Corporation or a subsidiary thereof to abandon any rail properties as to which it determines that rail service over such properties is not required by the public convenience and necessity, if the Corporation or a subsidiary thereof can demonstrate that no State (or local or regional transportation authority) is willing to offer a rail service continuation payment pursuant to subsection (c) of this section. The Commission may, at any time after the effective date of the final system plan, authorize additional rail service in the region or authorize the abandonment of rail properties which are not being operated by the Corporation or any subsidiary or affiliate thereof or by any other person. Determinations by the Commission under this subsection shall be made pursuant to applicable provisions of the Interstate Commerce Act.

(h) *Interim abandonment.*—After the date of enactment of this section and prior to the date of conveyance (pursuant to section 303(b)(1) of this title), no railroad in reorganization in the region may discontinue service or abandon any line of railroad other than in accordance with the provisions of this Act, unless (1) it is authorized to do so by the Association, and (2) no affected State (or local or regional transportation authority) reasonably opposes such action, notwithstanding any provision of any other Federal law, the constitution or law of any State, or the decision or order of, or the pendency of any proceeding before any Federal or State court, agency, or authority.

(i) *Disposition of designated rail properties.*— No railroad in reorganization in the region and no person leased, operated or controlled by such a railroad shall sell, transfer, encumber, or otherwise dispose of rail property, or any right or interest therein, designated for transfer to the Corporation or conveyance to a profitable railroad in the final system plan, except pursuant to section 303(b) of this title. The provisions of this subsection shall not apply to any such sale, transfer, encumbrance, or other disposition—

(1) as to which the Association generally or specifically consents in writing;

(2) which, prior to enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, had been specifically approved by a United States district court having jurisdiction over the reorganization of a railroad in reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 205); or

(3) following certification to the special court, pursuant to section 209(c) of the Regional Rail Reorganization Act of 1973, of any such rail properties not previously so certified.

(j) *Exemption.*—

(1)(A) Except as provided in subparagraph (B) of this paragraph, no local public body which provides mass transportation services by rail, and which is otherwise subject to the Interstate Commerce Act shall, with respect to the provision of such services, be subject to the Interstate Commerce Act or to rules,

regulations, and orders promulgated under such Act, if the interstate fares, or the ability to apply to the Interstate Commerce Commission for changes thereto, of such local public body is subject to approval or disapproval by a Governor of any State in which it provides services.

(B) Any local public body described in subparagraph (A) of this paragraph shall continue to be subject to applicable Federal laws pertaining to (i) safety, (ii) the representation of employees for purposes of collective bargaining, and (iii) employment retirement, annuity, and unemployment systems or any other provision pertaining to dealings between employees and employers.

(2) For purposes of this subsection, the term—

(A) "local public body" has the meaning prescribed for such term in section 12(c)(2) of the Urban Mass Transportation Act (49 U.S.C. 1608(c)(2)) and includes any person or entity which contracts with a local public body to provide transportation services; and

(B) "mass transportation services" means transportation services described in section 12(c)(5) of the Urban Mass Transportation Act (49 U.S.C. 1608(c)(5)) which are provided by rail.

APPENDIX B

FINAL SYSTEM PLAN

RESTRUCTURING SERVICE THROUGH COORDINATION

A principal tool for improving rail efficiency, minimizing public sector funding and serving other goals of the Act is the coordination of facilities and services among railroads. The proposed coordination projects outlined in the PSP are described in some detail in Chapter 8 and its appendix (Part II). There are several projects deserving special mention because of their scope and significance for future improvements in efficiency.

In the work leading to the PSP, a critical problem was identified in the north-south lines radiating from Chicago to Southern Illinois and Indiana. These lines

provide ConRail with access to significant traffic and are necessary for the direct routing of freight. They are, however, in a terrible state of repair. Programed rehabilitation could not be achieved for a number of years because of priority needs on other lines. This fact, coupled with the existence of alternate, well-maintained routes of solvent carriers, led USRA to extensively study rerouting possibilities for points in Southern Illinois and Southern Indiana. Discussions were held with the Illinois Central Gulf (ICG), Chessie System, Chicago & Eastern Illinois (C&EI), Chicago & Western Indiana (C&WI), Milwaukee Road (CMStP&P) and the Louisville & Nashville (L&N). These discussions led to the following recommendations for route restructuring.

ConRail would route all of its Southern Illinois through traffic via Lawrenceville, Ill., thence eastward on the Chessie System (B&O) to Vincennes and then up the Louisville & Nashville/Chicago & Eastern Illinois to the Chicago area. L&N will be offered trackage rights into the Southern Illinois mines on lines designated for ConRail for the movement of south-bound coal, and USRA will support L&N's petition for these rights before the ICC. (Since this project was not approved under section 206(d)(3) as an acquisition by a solvent carrier, the project must go through normal Commission procedures).

Between Indianapolis and Chicago, ConRail will rebuild its line as far as Lafayette (as was proposed in the Preliminary System Plan) and will then obtain trackage rights over the Louisville & Nashville (formerly Monon) into the Chicago area.

In the Southern Indiana coal fields, it is proposed that Louisville & Nashville obtain trackage rights over lines being designated for ConRail between Straight Line Junction (just north of Evansville) and Oakland City and between Buckskin and Lynnville. The portion of the former proposal between Oakland City and Straight Line Junction already has been approved by the Commission in Docket 293 (Sub. No. 4). However, USRA recommends under section 206(g) that L&N be granted trackage rights over the ConRail Lynnville Branch. This will give Louisville & Nashville access to the Algiers, Winslow & Western Railway and certain on-line mines for coal movements to the south. In addition, ConRail will obtain trackage rights over the Chessie (B&O) from a point just west of Washington, Ind. to Vincennes, thence over the L&N/C&EI to Chicago. Thus, ConRail can consolidate its coal flows from Southern Illinois and Southern Indiana to the Chicago area over an existing high capacity and well maintained railroad.

There will be significant advantages to both L&N and ConRail from the recommended reroutings. The Louisville & Nashville would receive additional payments from ConRail for use of its tracks, thereby spreading the fixed ownership and the fixed portions of maintenance costs over a larger traffic base. ConRail will avoid the expenditures required to bring its presently deteriorated track (operation at 10 to 20 m.p.h.) up to a standard necessary for efficient movement of through trains. Inasmuch as these are not priority lines for ConRail rehabilitation, operating efficiency and shipper service would be improved more rapidly.

Amtrak will benefit, as its Cincinnati to Chicago service now is being detoured over the Chesapeake & Ohio and is missing the key market of Indianapolis. Without the proposed project, it would be three or more years before Amtrak service could be rerouted through Indianapolis. With the mileage required for rehabilitation sharply reduced through this coordination project, service improvement could be advanced by several years.

As a longer term project, USRA believes the Louisville & Nashville and ConRail should explore the possibilities of establishing a single high standard route between Louisville and Chicago for joint use. There are several possible alternatives. One would be to use the Penn Central from Louisville to Lafayette, thence the Monon to Chicago. Another would be to use the present Louisville & Nashville (Monon) with access to Indianapolis from Louisville over the PC line from Gosport.[11] Included in these studies should be the joint use of yards in the Louisville area—specifically, the Louisville & Nashville's rebuilt Strawberry Yard (scheduled for completion in 1977).

This is but one of the coordination opportunities identified for future implementation. It is recommended that ConRail pursue this project and other possibilities aggressively so that improvements in service will not depend totally on the speed with which it can rebuild its own lines and so that the total cost to the taxpayer can be reduced to the absolute minimum.

[11] USRA has already recommended and the ICC has made the necessary favorable determination concerning L&N trackage rights over properties designated to ConRail between Greencastle, Ind. and Indianapolis, thereby providing it with a more direct route for its traffic from Indianapolis to the South. Using the ConRail line through Martinsville would further reduce the L&N circuitry

Transferor and interest	From—	To—	Milepost from—	Milepost to—
TO CONRAIL—Continued				
Delaware & Hudson: (a) Road properties:				
Rail lines—Trackage rights in transferor's interest in rail line from Wilkes-Barre, PA to Voorheesville, NY. From the present connection between Wilkes-Barre Connecting Railroad and the PC and the present Penn Central line between Selkirk and Syracuse.				
Chicago & Western Indiana: (a) Road properties:				
Rail lines—Transferor's interest in the following rail line:				
Trackage rights	Dolton Junction, IL.	80th St. Yard (Chicago, IL).	16.5	8.7.
Elgin, Joliet & Eastern: (a) Road properties:				
Rail lines—Transferor's interest in the following rail line:				
Trackage rights	Hartsdale, IN (Joliet Branch).	Chicago Heights, IL.	12.2	27.2.
Grand Trunk Western: (a) Road properties:				
Rail lines—Transferor's interest in the following rail lines:				
Trackage rights	Munster, IN	Thornton Junction, IN.	31.5	25.2.
Trackage rights: At Battle Creek, MI			175.5	176.9.
Trackage rights if offers to GTW under coordination projects GTW-6 and GTW-7 are not accepted.	Durand, MI	Saginaw, MI	0.00	39.1.
Facilities—Transferor's interest in Detroit Terminal RR.				
Illinois Central Gulf: (a) Road properties:				
Rail lines—Transferor's interest in approximately 504 ft. of track from street crossing at Broadway, Pekin, IL., to switch connecting interchange track with Riverview Hatchery siding, and use of ICG Main Track.				
Louisville & Nashville: (a) Road properties:				
Rail lines—Transferor's interest in the following rail lines:				
Trackage rights	Carmi, IL	Vincennes, IN (via Howell).	360.3	234.6.
Trackage rights	Vincennes, IN	Woodland Junction, IL.	234.6	82.6.
Trackage rights	LaFayette, IN	State Line Tower, IN.	207.4	305.5.
Facilities—Access to and joint use and rights in transferor's interest in Strawberry Yard at Louisville, KY, at L&N Milepost 9.0.				
Milwaukee: (a) Road properties:				
Rail lines—Transferor's interest in the following rail lines:				
Trackage rights	Danville, IL	Chicago, IL	121.2	31.8.
Trackage rights	Terre Haute, IN.	Beehunter, IN	175.1	218.4.
Trackage rights	Beehunter, IN	Elnora, IN	218.4	224.0.
Trackage rights	Danville, IL	Terre Haute, IN.	121.2	175.1.
Norfolk & Western: (a) Road properties:				
Rail lines—Transferor's interest in the rail line at Indianapolis from Milepost N&W 0.79 to Milepost N&W 1.87.				
Yards—Transferor's interest in Bison Yard, at Buffalo, NY with trackage rights reserved to N&W.				

tance of *8.6 miles*, in Madison County, Ill., a line which was recommended for inclusion on page 414 of the Preliminary System Plan, shall be offered for sale to the Illinois Central Gulf RR, a profitable railroad operating in the Region. If this offer is not accepted, the line shall be transferred to the Consolidated Rail Corp.

PORTION OF THE CAIRO BRANCH

USRA Line No. 605

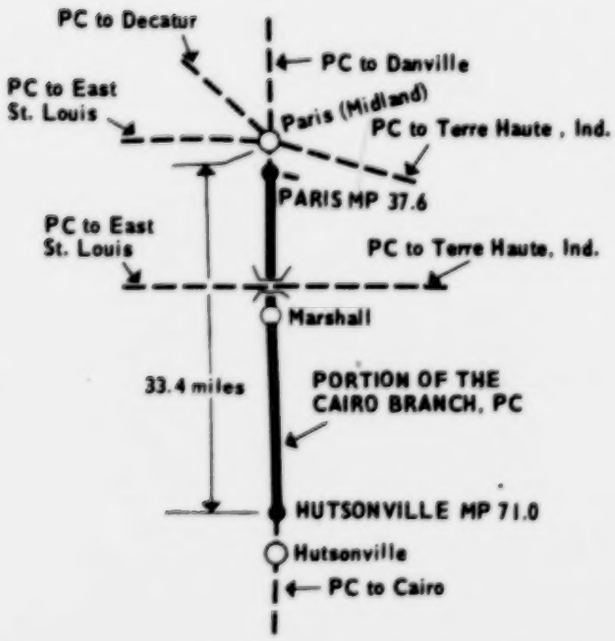
Penn Central

This portion of the Cairo Branch, extending from *Danville* (Milepost 5.3) to *Paris, Ill.* (Milepost 37.1), a distance of *31.8 miles*, in Vermilion and Edgar Counties, Ill., a line which was recommended for inclusion on page 415 of the Preliminary System Plan, shall be transferred to the Consolidated Rail Corp.

PORTION OF THE CAIRO BRANCH

USRA Line No. 605a

Penn Central



This portion of the Cairo Branch, formerly part of the New York Central RR, extends from *Paris* (Milepost 37.6) to *Hutsonville, Ill.*, (Milepost 71.0), a distance of *33.4 miles*, in Edgar, Clark and Crawford Counties, Ill. At Paris, the line continues north to Danville and Indiana Harbor, Ind., and at Hutsonville the line continues south to Cairo (see Line Nos. 605 and 605b). Also at Paris, the line connects with the PC Peoria Secondary Track and the PC Lenox-to-Davis line to East St. Louis and Terre Haute (see Line Nos. 618 and 618a). The PC (ex-PRR) Indianapolis-St. Louis line crosses near Marshall.

Traffic and Operating Information

Stations (with their 1973 carloads) served by this line:	
Oliver	0
Marshall	4
West Union	5
Total carloads generated by the line	9
Average carloads per week	0.2
Average carloads per mile	0.3
Average carloads per train	0.5
1973 operating information:	
Number of round trips per year	18
Estimated time per round trip (hours)	6
Locomotive horsepower	2,000
Train crew size	4

Public Comments on Preliminary System Plan

This segment of that portion of the Cairo Branch running from Danville south to Olmsted is one of four segments which were not included in the Plan—USRA Line Nos. 605a, 605b, 606, and part of 606a, and three segments which were included—USRA Line Nos. 605, part of 606a and 607. This fragmentation received heavy criticism. The Cairo Branch is reportedly the shortest and most direct route for Southern Illinois coal to the Chicago area and is currently a high-volume through route for that commodity.

The Brotherhood of Locomotive Engineers stated that the entire branch now meets FRA Class I track standards.

Respondents along the Branch testified that the ICG cannot meet car supply demands, rerouting would be too circuitous, and the short haul for the ICG would create no incentive for that railroad to provide cars and service needed.

Union Carbide suggested that, if the line is to be segmented, the logical break should be the PC intersection near Marshall instead of Hutsonville, leaving all of Line No. 605b and the Hutsonville to Marshall portion of Line No. 605a in to provide access for considerable traffic moving northeast from Robinson. Apparently little local traffic moves on Line No. 605a.

The United Transportation Union reported the 300 round trips per year used by USRA in the Plan is double the actual number (three per week).

The ICG does *not* believe that 605a would be a viable addition to its system, but is negotiating with USRA to develop the most efficient route for the movement of coal.

Information for Line-Transfer Decision

Revenue received by PC		$2,991
Average revenue per carload	$332	
Variable (avoidable) cost of continued service:		
Cost incurred on the branch line	216,576	
Cost of upgrading branch line to FRA Class I: (1/10 of total upgrading cost)	31,659	
Cost incurred beyond the branch line	1,443	
Total variable (avoidable) cost		249,678
Net contribution (loss): total		(246,687)
Average per carload		(27,410)

This line would require upgrading to meet the requirements of the Federal Railroad Administration's minimum safety standards (Class I track, which has a maximum safe operating speed of 10 m.p.h.). Based on available information, this upgrading would include the replacement of a total of 3,573 crossties (an average of 107 crossties per mile).

The frequency of service has been reduced to reflect the rerouting of coal now moving overhead on this line.

Service to this line generated a loss of $246,687 in 1973. Recovery of this loss would require approximately a one hundred fifty-ninefold increase in traffic or an 82,476-percent rate increase.

Through coal traffic can be rerouted on a parallel L&N route.

Disposition

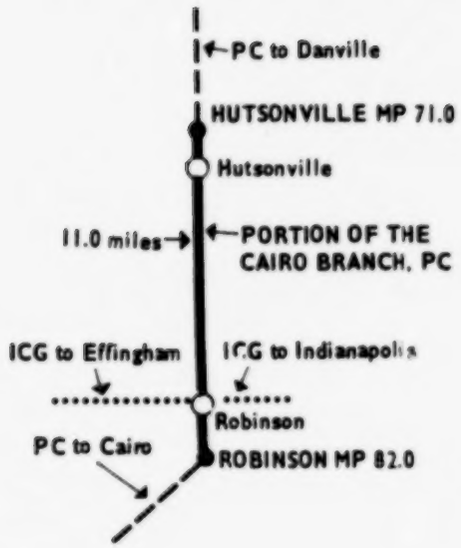
If the necessary trackage rights over the L&N *cannot* be obtained, this portion of the Cairo Branch shall be transferred to Consolidated Rail Corp. If the necessary trackage rights over the L&N *are* acquired, this portion of the Cairo Branch is *not* designated for transfer to Consolidated Rail Corp. and is available for subsidy pursuant to section 304 of the Act. Public officials have recommended that certain rail rights-of-way be used for other public purposes if rail service is discontinued. For line-specific recommendations, see section C of this appendix.

PORTION OF THE CAIRO BRANCH

USRA Line No. 605b

Penn Central

This portion of the Cairo Branch, formerly part of the New York Central RR, extends from *Hutsonville* (Milepost 71.0) to *Robinson, Ill.* (Milepost 82.0), a distance of *11.0 miles*, in Crawford County, Ill. At Hutsonville, the line continues north to Danville (see Line No. 605a) and at Robinson, south to Cairo (see Line No. 606). A connection is made with the Illinois Central Gulf at Robinson.



Traffic and Operating Information

Stations (with their 1973 carloads) served by this line:	
Hutsonville	2,146
Trimble	12
Robinson	1,554
Total carloads generated by the line	3,712
Average carloads per week	71.4
Average carloads per mile	337.4
Average carloads per train	12.4
1973 operating information:	
Number of round trips per year	300
Estimated time per round trip (hours)	5.0
Locomotive horsepower	4,000
Train crew size	4

Public Comments on Preliminary System Plan

See comments on USRA Line No. 605a.

Union Carbide pointed out a significant error in USRA's carload data for Robinson—stating that Union Carbide and Marathon Oil shipped a total of 1,487 carloads north on this line in 1973.

The Central Illinois Public Service Co. operates a coal-fired 218,000 kilowatt power plant at Hutsonville, which will use over 3,000 carloads of coal in 1975.

Loss of rail service would seriously impair the ability of Central Illinois Power to serve its 760,000 electricity consuming customers.

Peabody Coal Co. plans to ship 100,000 tons of coal in 1975 from its Will Scarlet Mine at Stonefort north on the Cairo Branch to Hutsonville.

The ICG believes that Line No. 605b/606/606a would be a viable addition to its system and is interested in acquisition pending the outcome of negotiations with USRA.

The Federal Power Commission points out the importance of this line and lines 606 and 606a to the 200 megawatt electric power generating plant at Hutsonville, which receives about 200,000 tons of coal per year by rail.

Information for Line-Transfer Decision

Revenue received by PC		$824,083
Average revenue per carload	$222	
Variable (avoidable) cost of continued service:		
Cost incurred on the branch line	219,757	
Cost of upgrading branch line to FRA Class I: (1/10 of total upgrading cost)	11,382	
Cost incurred beyond the branch line	719,394	
Total variable (avoidable) cost		950,533
Net contribution (loss): total		(126,500)
Average per carload	(34)	

This line would require upgrading to meet the requirements of the Federal Railroad Administration's minimum safety standards (Class I track, which has a maximum safe operating speed of 10 m.p.h.). Based on available information, this upgrading would include the replacement of a total of 1,175 crossties (an average of 115 crossties per mile).

This line was reanalyzed and all Robinson traffic was assigned to this segment.

Service to this line generated a loss of $126,500 in 1973. Recovery of this loss would require approximately a 121 percent increase in traffic or a 15 percent rate increase.

Through coal traffic will be routed over ConRail to Lawrenceville, via the Chessie System to Vincennes, thence north via the L&N.

Approximately 50 percent of the coal shipped to Hutsonville is handled by motor carrier and, according to available information, all of the inbound coal can economically be handled by truck.

Disposition

If the necessary trackage rights over the L&N *cannot* be obtained, this portion of the Cairo Branch shall be transferred to the Consolidated Rail Corp. If the necessary trackage rights over the L&N *are* acquired, this portion of the Cairo Branch shall be offered for sale to the Illinois Central Gulf RR, a profitable railroad operating in the Region. This sale would preserve rail service to 3,712 carloads or 100 percent of the traffic generated on this line. If this offer is not accepted, the line is *not* designated for transfer to Consolidated Rail Corp. and is available for subsidy pursuant to section 304 of the Act. Public officials have recommended that certain rail rights-of-way be used for other public purposes if rail service is discontinued. For line-specific recommendations, see section C of this appendix.

PORTION OF CAIRO BRANCH

USRA Line No. 606

Penn Central

This portion of the Cairo Branch, formerly part of the New York Central RR, extends from *Robinson* (Milepost 82.0) to *Mount Carmel, Ill.* (Milepost 126.3), a distance of *44.3 miles*, in Crawford, Lawrence and Wabash Counties, Ill. At Robinson, this line continues north to Danville and, at Mount Carmel, south to Cairo (see Line Nos. 605b and 606a). Other connections are: the Illinois Central Gulf RR at Robinson; the Baltimore & Ohio RR at Lawrenceville; the Southern Ry. at Mount Carmel, and the PC Evansville Secondary Track at Mount Carmel (see Line No. 612).

Traffic and Operating Information

Stations (with their 1973 carloads) served by this line:	
Flat Rock	112
Pinkstaff	16
Lawrenceville	277
St. Francisville	4
Allendale	41
Mount Carmel[1]	572
Total carloads generated by the line	1,022
Average carloads per week	19.7
Average carloads per mile	23.1
Average carloads per train	6.8
1973 operating information:	
Number of round trips per year	150
Estimated time per round trip (hours)	10.0
Locomotive horsepower	4,000
Train crew size	4

[1] Includes only traffic on segment.

Public Comments on Preliminary System Plan

See comments on USRA line No. 605a.

Pacific Press & Shear Co., stated its need for rail service at its Mount Carmel plant. Pacific's inbound traffic is 4,000 tons of steel plate per year instead of the 2,700 tons indicated in the Plan.

The Mayor of Mount Carmel estimated a daily traffic potential of 200,000 tons outbound and 100,000 tons inbound of agricultural products, coal, etc.

Chessie would continue to provide rail service to *Lawrenceville shippers only*, who would otherwise be without service if 606 were abandoned.

Information for Line-Transfer Decision

Revenue received by PC		$280,641
Average revenue per carload	$275	
Variable (avoidable) cost of continued service:		
Cost incurred on the branch line	438,462	
Cost of upgrading branch line to FRA Class I: (1/10 of total upgrading cost)	44,366	
Cost incurred beyond the branch line	183,589	
Total variable (avoidable) cost		666,417
Net contribution (loss): total		(385,776)
Average per carload	(377)	

This line will require upgrading to meet the requirements of the Federal Railroad Administration's minimum safety standards. Based on available information, this upgrading would include the replacement of a total of 2,284 crossties.

Traffic at Robinson was assigned to Line No. 605b.

ConRail will move coal traffic between the southern Illinois coal fields and northern markets by using part of Line 606 as a through route. ConRail trains will move east on the B&O between Lawrenceville, Ill. and Vincennes, Ind., and north to Chicago on L&N trackage rights.

Disposition

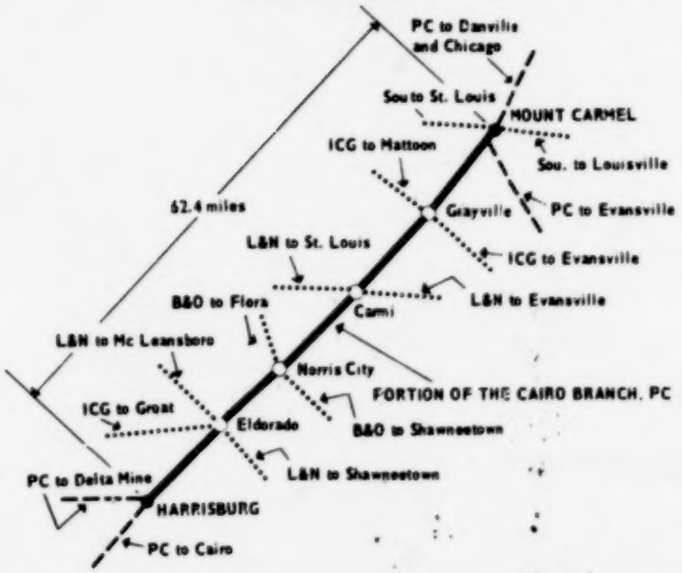
The portion of the Cairo Branch from Milepost 126.3 to Milepost 101.0 shall be transferred to the Consolidated Rail Corp.

If the necessary trackage rights over the L&N *cannot* be obtained, the portion of the Cairo Branch from Milepost 82.0 to Milepost 101.0 shall be transferred to the Consolidated Rail Corp. If the necessary trackage rights over the L&N are acquired, the portion of the Cairo Branch from Milepost 82.0 to Milepost 101.0 is *not* designated for transfer to Consolidated Rail Corp. and is available for subsidy pursuant to section 304 of the Act. Public officials have recommended that certain rail rights-of-way be used for other public purposes if rail service is discontinued. For line-specific recommendations, see section C of this appendix.

PORTION OF THE CAIRO BRANCH

USRA Line No. 606a

Penn Central



This portion of the Cairo Branch, formerly part of the New York Central RR, extends from *Mount Carmel* (Milepost 126.3), to *Harrisburg, Ill.* (Milepost 188.7), a distance of *62.4 miles*, in Wabash, Edwards, White, Gallatin and Saline Counties. Ill. At Mount Carmel, this line continues north to Danville, and at Harrisburg south to Cairo (see Line Nos. 606 and 607). In addition, the line connects with the Southern Ry St. Louis-Louisville line at Mount Carmel, the Illinois Central Gulf to Mattoon and Evansville at Grayville, the Louisville & Nashville at Carmi and Eldorado, the Baltimore & Ohio Shawneetown Branch at Norris City, the PC Saline Valley Branch at Harrisburg, and the PC Evansville Secondary Track at Mount Carmel (see Line Nos. 607b and 612). Another connection is made with the Illinois Central Gulf at Eldorado.

Traffic and Operating Information

Stations (with their 1973 carloads) served by this line:	
Keensburg	67
Grayville	131
Crossville	66
Carmi	151
Norris City	1
Eldorado	1,839
Mount Carmel [1]	135
Total carloads generated by the line	2,390
Average carloads per week	46.0
Average carloads per mile	38.3

See footnote at end of table.

Average carloads per train	8.0
1973 operating information:	
Number of round trips per year	300
Estimated time per round trip (hours)	12
Locomotive horsepower	4,000
Train crew size	4

[1] Includes only traffic on this segment.

Public Comments on Preliminary System Plan

See comments on USRA Line No. 605a.

Respondents considered as confusing and ambiguous the USRA recommendation that Line No. 606a not be included in ConRail except between Mount Carmel and Eldorado, but that segment would be operated only if shippers were unable to reroute coal traffic.

Public Service Co. and Amax Coal Co. were particularly concerned because Amax projects the shipment of 3 to 6 million tons of coal per year from their Wabash mine near Keensburg to Public Service's Gibson Station at Skelton. It is only 6 miles from Keensburg to Mount Carmel and there is no reasonable alternative routing.

The Sahara Coal Co. operates three mines on the Saline Valley Branch (USRA Line No. 607b) west of Harrisburg. Sahara shipped over 1.9 million tons of coal in 1974, 61 percent on the PC and 39 percent on the ICG. Sahara says the ICG is perpetually short of cars and unable to meet present demand. The company would have to close two of its mines, laying off nearly 400 workers, if it lost access to the PC.

At Eldorado, the Federal Wholesale Division of Scot Lad Foods, Inc., is located on the PC siding. It receives 2,300 cars per year. According to Federal, neither the ICG nor the L&N have the facilities in Eldorado to handle Federal's traffic.

Other shippers and receivers included Warren Petroleum Co. (1974–90 cars) and Halliburton Services (1974–11 cars) in Crossville, Illinois.

Information for Line-Transfer Decision

Revenue received by PC		$469,003
Average revenue per carload	$196	
Variable (avoidable) cost of continued service:		
Cost incurred on the branch line	739,285	
Cost of upgrading branch line to FRA Class I: (1/10 of total upgrading cost)	62,689	
Cost incurred beyond the branch line	351,406	
Total variable (avoidable) cost		1,153,380
Net contribution (loss): total		(684,377)
Average per carload	(286)	

This line would require upgrading to meet the requirements of the Federal Railroad Administration's minimum safety standards (Class I track, which has a maximum safe operating speed of 10 m.p.h.). Based on available information, this upgrading would include the replacement of a total of 5,600 crossties (an average of 90 crossties per mile).

A review of this line indicated it is required for the northbound movement of coal.

Disposition

This portion of the Cairo Branch shall be transferred to the Consolidated Rail Corp.

PORTION OF THE CAIRO BRANCH

USRA Line No. 607

Penn Central

This portion of the Cairo Branch, extending from *Harrisburg* (Milepost 188.7) to *Olmsted, Ill.* (Milepost 245.3), a distance of *56.6 miles*, in Saline, Massac, Johnson, Williamson and Pulaski Counties, Ill., a line which was recommended for inclusion on page 419 of the Preliminary System Plan, shall be transferred to the Consolidated Rail Corp.

It is recommended that the portion of this line from Milepost 235.2 (Karnak) to Milepost 245.3 (Olmsted) be sold to the Burlington Northern (see section 206(g) of the Act).

SALINE VALLEY BRANCH

USRA Line No. 607b

Penn Central

The Saline Valley Branch, extending from *Harrisburg* (Milepost 0.0) to *Delta Mine, Ill.* (Milepost 10.7), a distance of *10.7 miles*, in Saline County, Ill., a line which was recommended for inclusion on page 420 of the Preliminary System Plan, shall be transferred to the Consolidated Rail Corp.

PORTION OF PEORIA SECONDARY TRACK

USRA Line No. 609

Penn Central

This portion of the Peoria Secondary Track, formerly part of the Pennsylvania RR, extends from *Paris* (Milepost 22.5) to *Decatur, Ill.* (Milepost 95.5), a distance of *73.0 miles*, in Edgar, Coles, Douglas, Moultrie